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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/635,249      | 08/06/2003  | Donald C. Roe        | 8556C               | 9458             |

27752 7590 04/14/2006

THE PROCTER & GAMBLE COMPANY  
INTELLECTUAL PROPERTY DIVISION  
WINTON HILL TECHNICAL CENTER - BOX 161  
6110 CENTER HILL AVENUE  
CINCINNATI, OH 45224

EXAMINER

BOGART, MICHAEL G

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3761

DATE MAILED: 04/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |  |                     |  |
|------------------------------|------------------------|--|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> |  | <b>Applicant(s)</b> |  |
|                              | 10/635,249             |  | ROE ET AL.          |  |
|                              | <b>Examiner</b>        |  | <b>Art Unit</b>     |  |
|                              | Michael G. Bogart      |  | 3761                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1, 2 and 4-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7-20 is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 4-6 is/are rejected.
- 7) ☒ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Withdrawal of Allowable Subject Matter***

The indicated allowability of claim 3 is withdrawn in view of the newly discovered reference(s) to Freeland (US 4,990,147). Rejections based on the newly cited reference(s) follow.

### ***Specification***

The abstract of the disclosure is objected to because on page 4, line 24, "9a" appears to be referring to figure "9b". Correction is required. See MPEP § 608.01(b).

### ***Claim Objections***

Claim 5 is objected to because of the following informalities:

Claim 5 recites the limitation "the multiplicity of compartments" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

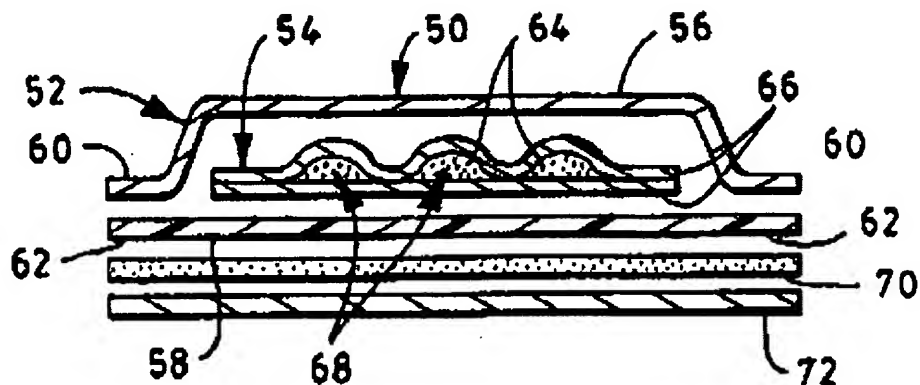
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. § 103(c) and potential 35 U.S.C. § 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 2 and 4-6 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Glaug *et al.* (US 5,702,376 A) in view of Freeland (US 4,990,147).

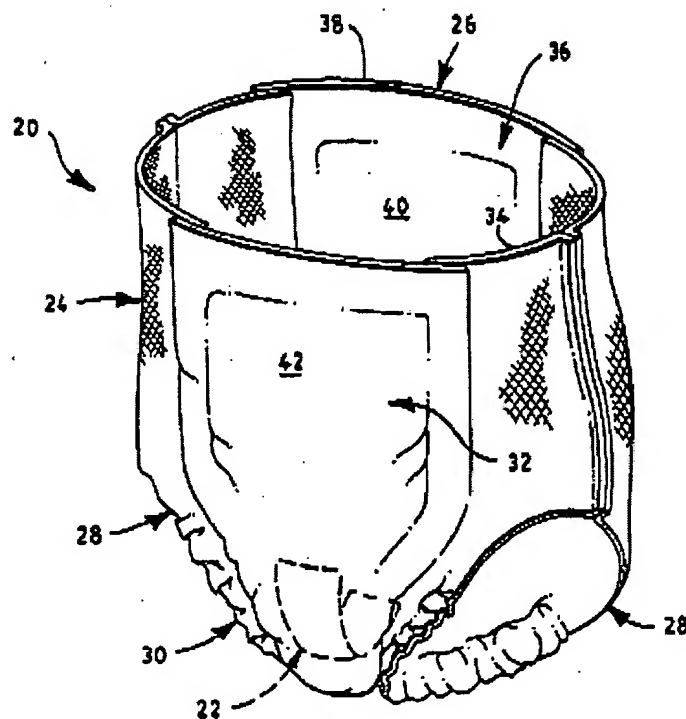
Regarding claim 1, Glaug *et al.* teach a wearable article (20) worn about the lower torso of a wearer, the wearable article comprising a temperature change element (22, 24, 56) including a permeable layer (56) an impermeable layer (58) disposed in a face-to-face arrangement with the permeable layer (56), and a temperature change substance (54, 64) interposed between the permeable layer (56) and the impermeable layer (58), wherein urine deposited onto the temperature change element (22, 24, 56) can penetrate through the upper permeable layer (56) in a z direction to the lower impermeable layer (58) and wherein the impermeable layer (58) prevents urine from passing completely through the temperature change element (22, 24, 56) in the z direction and supports the movement of urine in an x-y plane to wet the temperature change substance (54, 64)(col. 7, lines 16-59; col. 8, lines 21-36)(see figure 3, below).

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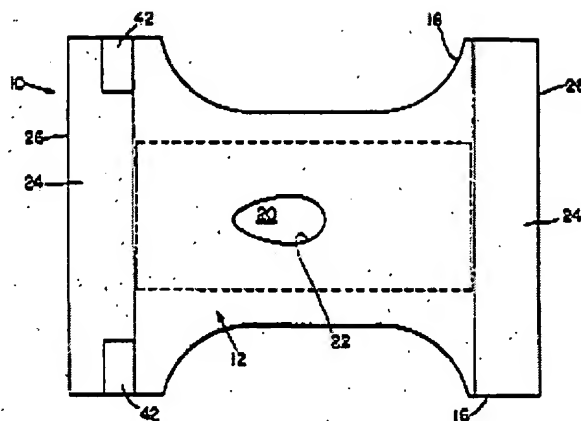
**FIG. 3**

Glaug *et al.* imply that side elastic materials may be used with that article (col. 14, lines 16-29)(see element (28) in figure 1, below).

Glaug *et al.* do not expressly disclose that such elastics are elastically foreshortened.



Freeland teaches an absorbent article (10) with elastically contracted side edges which allow the article to better conform to the anatomy of a wearer (see figure 1, *infra*).



At the time of the invention, it would have been obvious to one of ordinary skill in the art to add the elastically contracted side elements of Freeland to the article of Glaug *et al.* in order to provide form improved fit on a wearer.

Regarding claim 2 Glaug *et al.* teach that the temperature change substance (64) includes an endothermic salt (col. 9, lines 46-61).

Regarding claim 4, Glaug *et al.* teach that the temperature change element (22, 50) comprises a multiplicity of compartments (68) and the temperature change substance (64) is disposed in each of the compartments (68)(figure 3).

Regarding claim 5, Glaug *et al.* teach that the temperature change element (22, 50) comprises a multiplicity of fluid channels disposed parallel and between the compartments (68)(figure 3).

Regarding claim 6, Glaug *et al.* teach that the upper permeable layer (56) faces the body of a wearer (figure 3).

***Response to Arguments***

Applicant's arguments with respect to claims 1, 2 and 4-6 have been considered but are moot in view of the new ground(s) of rejection.

***Allowable Subject Matter***

Claims 7-20 are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

Regarding claims 7-20, Glaug *et al.* teach a permeable top layer and an impermeable bottom layer. The two layers enclose a temperature change element therebetween. These layers function as the topsheet and backsheet of an absorbent article. The reference does not disclose or fairly suggest a temperature change element having a permeable upper sheet and impermeable bottom sheet, the two sheets enclosing a temperature change substance, *the temperature change element being disposed on the topsheet of the absorbent article.*

***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Michael Bogart  
12 April 2006

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

